

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF: KYUNGHEEYON, LLC DBA SLEEP INN MOTEL Wastewater Facility No. 06-79-00-2-08	ADMINISTRATIVE ORDER NO. 2008-WW-27
---	--

TO: Kyunghhee Susie Yon, Manager
Kyunghheeyon, LLC
4130 Highway 21
Brooklyn, Iowa 52211

Donald Shild, Registered Agent
Shild Law Office
833 Broad Street, P.O. Box 268
Grinnell, Iowa 50112

I. SUMMARY

This administrative order (order) is issued to Kyunghheeyon, LLC dba Sleep Inn Motel due to failure to timely apply to renew an NPDES permit. The order assesses an administrative penalty in the amount of \$2,000.00.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Angela Foehring-Nkanta
Environmental Specialist, NPDES Section
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: (515) 242-6043

Relating to legal requirements:

Diana Hansen
Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: (515) 281-6267

Mail payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50310-0034

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
KYUNGHEEYON, LLC, DBA SLEEP INN MOTEL**

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Sleep Inn Motel is located at 4130 Highway 21, Brooklyn, Iowa 52211. The motel is located on Highway 21, just off Interstate 80. The motel property was purchased by Kyunghee Susie Yon and Kyuwon Yon on August 16, 2004. On September 12, 2005 the motel property was transferred by warranty deed to Kyungheeyon, LLC. Kyunghee Susie Yon is the manager of this LLC according to information from the Secretary of State's Office.

2. The Sleep Inn Motel property is described as Parcel B in the southeast quarter (SE 1/4) of the northeast quarter (NE 1/4) of Section 33, Township 80 North, Range 13 West, Poweshiek County, Iowa. The Sleep Inn Motel has a wastewater disposal system that consists of a septic tank followed by a sand filter. This wastewater disposal system is operated pursuant to NPDES Permit No. 06-79-00-2-08, which expired on August 27, 2008. The wastewater disposal system discharges to an unnamed tributary to Cub Creek, which then flows to Big Bear Creek.

3. The renewal application for the NPDES permit was required to be filed by 180 days prior to expiration of the NPDES permit or by February 29, 2008. This is a condition of the current NPDES permit and a requirement under Department rules. The Department sent a renewal application form to the permit holders on November 1, 2007. On April 25, 2008 a notice of violation (NOV) letter was sent for failure to submit the completed renewal application timely. The Department received a complete permit renewal application following issuance of the NOV letter.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without or contrary to a permit from the Department. Iowa Code section 455B.183 prohibits the construction or operation of waste disposal systems without or contrary to written permits from this Department. Iowa Code section 455B.174 authorizes the Director to issue permits for the operation of a disposal system.

Iowa Code section 455B.171(5) defines "disposal system". Disposal system is defined as "a system for disposing of sewage, industrial waste, or other wastes, or for the use or

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
KYUNGHEEYON, LLC, DBA SLEEP INN MOTEL**

disposal of sewage sludge.” The term “includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.” The septic tank and sand filter are considered a disposal system under this definition of disposal system.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems and discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69. Subrule 62.1(1) prohibits the discharge of pollutants to waters of the state unless authorized by a permit from this Department. Subrule 64.3(1) prohibits the operation of a waste disposal system unless authorized by a permit from this Department and prohibits operation of any waste disposal system contrary to any condition of a permit.

3. Department subrule 567 IAC 64.8(1) states that “[a]ny state NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit.” The facts stated above demonstrate noncompliance with this provision.

4. The terms of this facility’s NPDES permit and the Department subrule required submission of an application for NPDES permit renewal to the Department no later than February 29 2008. The Department received a complete NPDES permit renewal application for this facility following issuance of the NOV.

V. ORDER

THEREFORE, the Department orders Kyungheeyon, LLC to comply with the following provision in order to resolve this matter:

You are assessed and required to pay an administrative penalty of \$2,000.00. The administrative penalty is due within sixty days after receipt of this order. If you appeal this order as outlined in Section VII below, the penalty is not due until the appeal is resolved by a final administrative order, final court order or agreement of the parties.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
KYUNGHEEYON, LLC, DBA SLEEP INN MOTEL**

that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$2,000.00.

a. Economic Benefit. The facility owner initially saved money by not allocating time and resources to the submission of the NPDES permit renewal application. Since a complete application has been received, no amount will be assessed for this factor.

b. Gravity of the Violation. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to timely submit a renewal application for an NPDES permit and operation of a wastewater treatment facility without an NPDES permit are serious violations. The amount of \$1,000.00 is assessed for this factor.

c. Culpability. The Department sent a renewal application and a notice of violation letter to this facility advising it of its duty to timely submit its renewal application. The amount of \$1,000.00 is assessed for this factor.

VI. Appeal Rights

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with section "V. Order" constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties under Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 6 day of

Nov., 2008

Kyungheon, LLC dba Sleep Inn Motel- NPDES Permit No. 06-79-00-2-08 (Central Office Records File), Angela Foehring-Nkanta- NPDES Section, James Stricker- Field Office No. 5, Diana Hansen-Legal Services, EPA Region VII, I.B.1, I.B.2.d.